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Equal Employment Opportunity Commission, Plaintiff, vs. Fiserv Inc and Fiserv Solutions Inc. d/b/a Mortgageserv, Defendants.

Judge Allen Sharp

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Equal Employment Opportunity Commission, Plaintiff, vs. Fiserv Inc and Fiserv Solutions Inc. d/b/a Mortgageserv, Defendants.

Keywords

Equal Employment Opportunity Commission, Fiserv Inc, Fiserv Solutions Inc., Mortgageserv, 3:05-cv-0469 AS, Consent decree / Settlement, Failure to Accommodate, Other physical impairment disability, Financial Services, Employment Law, ADA

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION**

**EQUAL EMPLOYMENT OPPORTUNITY)
COMMISSION,)**

Plaintiff,)

vs.)

**FISERV INC. and FISERV SOLUTIONS)
INC. d/b/a MORTGAGESERV,)**

Defendants.)

Case No. 3:05-cv-0469 AS

CONSENT DECREE

THE LITIGATION

1. Plaintiff Equal Employment Opportunity Commission (the "EEOC") filed this action alleging that Defendants, Fiserv, Inc. ("Fiserv") and Fiserv Solutions, Inc. ("Fiserv Solutions") (collectively "Defendants"), engaged in unlawful employment practices pursuant to Section 107 of the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. § 12101, et seq. ("ADA") against Charging Party Jeffrey A. Stahl ("EEOC Claimant" or "Mr. Stahl"). Defendants deny the allegations.

2. In the interest of resolving this matter, and as a result of having engaged in comprehensive settlement negotiations, the parties have agreed that this action should be finally resolved by entry of this Consent Decree (hereafter "Decree"). This Decree fully and finally resolves any and all issues and claims arising out of the Complaint filed by the EEOC in Case No. 3:05-cv-469 AS. Nothing in this Decree shall constitute or shall be deemed to constitute an admission by any party regarding either liability or non-liability.

FINDINGS

3. Having carefully examined the terms and provisions of this Decree, and based on the pleadings, record, and stipulations of the parties, the Court finds the following:

a. This Court has jurisdiction of the subject matter of this action and of the parties.

b. The terms of this Decree are adequate, fair, reasonable, equitable, and just. The rights of the parties, the EEOC Claimant, and the public interest are adequately protected by this Decree.

c. This Decree conforms with the Federal Rules of Civil Procedure and the ADA and is not in derogation of the rights or privileges of any person. The entry of this Decree will further the objectives of the ADA and will be in the best interests of the parties, the EEOC Claimant, and the public.

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED THAT:

NON-DISCRIMINATION

4. Defendants agree that they will not discriminate against employees or applicants for employment on the basis of disability.

MONETARY RELIEF

5. Defendants agree to pay Mr. Stahl, or his heirs and assigns in the event of his death, the total sum of One Hundred-Seventy- Five Thousand Seven Hundred and Twenty Five Dollars (\$175,725) in settlement of Mr. Stahl's claims arising out of the Complaint filed by the EEOC in Case No. 3:05-cv-469 AS. The checks will be issued by Fiserv Solutions as follows: (1) a check (and W-2) to Mr. Stahl in the amount of One Hundred Thousand Dollars (\$100,000), less applicable

federal, state, and local withholding taxes, in full settlement of Mr. Stahl's claim for back wages (Fiserv Solutions shall not deduct from this amount the employer's share of any costs, taxes or social security required by law to be paid by Fiserv Solutions); (2) a check (and form 1099) in the amount of Seventy Five Thousand Dollars (\$75,000) to Mr. Stahl, in full settlement of Mr. Stahl's claims for compensatory and punitive damages; and (3) a check (and form 1099) in the amount of Seven Hundred Twenty Five Dollars (\$725) to Mr. Stahl, in full settlement of Mr. Stahl's claim for attorneys' fees. Upon entry of this Decree, the EEOC will forward the Release (Exhibit A) to Mr. Stahl for his execution. The EEOC will also forward to Mr. Stahl an Internal Revenue Service Form W-9 ("Form W-9"), Internal Revenue Service Form W-4 ("Form W-4") and a Michigan State Form MI-W4 ("Form MI-W4") for his completion. When the executed Release, Form W-9, Form W-4 and Form MI-W4 are received, the EEOC will transmit to defense counsel, the executed Release, Form W-9, Form W-4 and Form MI-W4. Defense counsel will retain the original executed Release until after payment has been made to Mr. Stahl and proof of delivery has been forwarded to defense counsel. Fiserv Solutions agrees to issue the above referenced checks to Mr. Stahl within ten business days of the entry of the Decree and receipt of the executed Release, completed Form W-9, Form W-4 and Form MI-W4 by defense counsel. The checks shall be mailed by certified mail to Mr. Stahl at 7160 Spring Lake Trail, Saginaw MI 46603. Proof of delivery shall be sent to the EEOC within 15 days of mailing said checks. Defense counsel will forward the original executed Release to Defendants after payment has been made to Mr. Stahl.

POSTING OF NOTICE

6. Fiserv Solutions agrees to post the Notice of Non-Discrimination Policy attached as Exhibit B (to be printed on EEOC letterhead) to this Decree in a conspicuous place at its South

Bend, Indiana, Florence, South Carolina and Dallas, Texas locations. Said notice shall remain posted throughout the term of this Decree.

DISCRIMINATION POLICY

7. Within thirty (30) days of the date of entry of this Decree, Fiserv Solutions agrees to implement or to have implemented an anti-discrimination policy which includes disability discrimination. Fiserv Solutions agrees that the policy will or has been included in an employees' manual or other printed memorandum which will have been distributed to each employee.

RECORD KEEPING

8. The Defendants agree that the EEOC may review compliance with this Decree. As part of such review, the EEOC upon ten (10) business days notice and for the purpose of verifying compliance with this Decree may enter the premises of Fiserv Solutions South Bend, Indiana location, interview employees of Fiserv Solutions, South Bend, Indiana location whom the EEOC reasonably requests, and examine and copy any non-privileged documents relating to any complaints of disability discrimination of Fiserv Solutions, South Bend Indiana location.

TRAINING

9. Within ninety (90) days of the entry of this Decree, Fiserv Solutions agrees to train all supervisory personnel located at its South Bend, Indiana, Florence, South Carolina and Dallas, Texas locations on the anti-discrimination policy.

REPORTING

10. Fiserv Solutions agrees to submit a report to the EEOC detailing its compliance with this Decree. Within one-hundred-twenty (120) days of the date of entry this Decree, Fiserv Solutions will report to the EEOC Regional Attorney that the distribution and explanation of the anti-

discrimination policy to employees has been completed and provide the EEOC with a copy of the manual or memorandum containing the policy prohibiting discrimination. Fiserv Solutions will also report to the EEOC that the Notice has been posted in accordance with paragraph 6 above and on the training identified in paragraph 9 above. The report shall be sent to the attention of Laurie A. Young, Regional Attorney, or her successor, Equal Employment Opportunity Commission, 101 W. Ohio Street, Suite 1900, Indianapolis, Indiana, 46204.

DISPUTE RESOLUTION

11. In the event that either party to this Decree believes that the other party has failed to comply with any provision(s) of the Decree, the complaining party shall notify the other party of the alleged non-compliance within sixty (60) days of the alleged non-compliance and shall afford the alleged non-complying party thirty (30) business days to remedy the non-compliance or to satisfy the complaining party that the alleged non-complying party has complied. If the alleged non-complying party has not remedied the alleged non-compliance or satisfied the complaining party that it has complied within thirty (30) business days, the complaining party may apply to the Court for appropriate relief.

DURATION OF THE DECREE

12. All provisions of this Decree shall be in effect for a period of two (2) years immediately following entry of the Decree.

MISCELLANEOUS PROVISIONS

13. Defendants agree that Fiserv Solutions will provide Mr. Stahl with the attached letter of reference (Exhibit C to be printed on Fiserv Solutions letterhead) within 30 days of the date of entry of the Decree and receipt of the executed Release (Exhibit A).

14. Each party to this Decree shall bear its own expenses, costs and attorneys' fees, except as provided in paragraph 5.

15. If any provision(s) of the Decree are found to be unlawful, only such provision(s) shall be severed, and the remainder of the Decree shall remain in full force and effect.

RETENTION OF JURISDICTION BY COURT

16. The court shall retain jurisdiction of this matter throughout the duration of this Decree for purposes of monitoring compliance with this Decree and entry of such further orders as may be necessary or appropriate.

DATE: October 24, 2006

S/ ALLEN SHARP

United States District Court Judge

EXHIBIT A
RELEASE AGREEMENT

I, Jeffrey A. Stahl, for and in consideration of the sum of One Hundred Seventy Five Thousand Seven Hundred Twenty Five Dollars (\$175,725), payable to me pursuant to the terms of the Consent Decree entered by the Court in EEOC v. Fiserv, Inc. and Fiserv Solutions, Inc., Case No. 3:05-cv-469AS, on behalf of myself, my heirs, assigns, executors, and agents, do hereby forever release, waive, remise, acquit, and discharge Fiserv, Inc. and Fiserv Solutions, Inc., and all past and present shareholders, officers, agents, trustees, directors, employees, and representatives of Fiserv, Inc. and Fiserv Solutions, Inc., as well as all successors and assigns of Fiserv, Inc. and Fiserv Solutions, Inc., from any and all claims and causes of action of any kind which I now have or ever have had under the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. § 12101 et seq., as a result of or arising from the subject matter and claims which were or which could have been asserted in EEOC v. Fiserv, Inc. and Fiserv Solutions, Inc., Case No. 3:05-cv-469 AS. I represent and warrant that I am the sole owner of the actual or alleged claims, damages, rights, causes of actions and other matters which are released herein; that the same have not been transferred or assigned or caused to be transferred or assigned to any other person, firm, corporation or other legal entity; that I have obtained all approvals necessary to enter into this Release and that I have the full right and power to grant, execute and deliver the releases, undertakings and agreements contained herein.

I have read this Release and I execute it voluntarily, without coercion or threat of reprisal.

Date

Jeffrey A. Stahl

Subscribed and sworn to before me
this _____ day of October, 2006.

Notary Public, State of _____
My Commission Expires: _____



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
Indianapolis District Office

101 West Ohio Street
Suite 1900
Indianapolis IN 46204-4203
PH: (317) 226-7212
TDD: (317) 226-5162
FAX: (317) 226-7953

EXHIBIT B

EMPLOYEE NOTICE
NOTICE TO ALL EMPLOYEES OF FISERV SOLUTIONS INC.

1. This Notice is posted pursuant to an agreement between Fiserv Solutions and the United States Equal Employment Opportunity Commission, resolving a lawsuit alleging disability discrimination. Fiserv Solutions denies the allegations.
2. Federal law requires that there be no discrimination against any employee because of the employee's race, color, religion, sex, national origin, age (over 40) or disability.
3. The Americans With Disabilities Act ("ADA") prohibits employers from discriminating against employees because of their disabilities or treating disabled employees differently from non-disabled employees.
4. Fiserv Solutions supports and will comply with such Federal law in all respects and will not take any actions against employees because they have exercised their ADA rights.
5. An employee may contact the U.S. Equal Employment Opportunity Commission at the address listed above for the purpose of filing a charge of employment discrimination.

THIS IS AN OFFICIAL NOTICE AND SHALL NOT BE DEFACED BY ANYONE

This notice must remain posted for twenty four (24) months from the date of posting and may not be altered, defaced or covered by any other material.

[FISERV SOLUTIONS LETTERHEAD]

EXHIBIT C

Mr. Jeffrey Stahl was employed by Fiserv Solutions, Inc. from December 1, 1998 to September 3, 2003 as a Software Development Engineer. Mr. Stahl's ending salary was \$61,293.00. Pursuant to Fiserv Solutions' corporate policy it cannot provide any additional information.

Sincerely,

Fiserv Solutions, Inc.